

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILLIP IRA SCHEFFLIN,
Petitioner,
v.
RICHARD MORGAN,
Respondent

Case No. C05-5696FDB

**ORDER ADOPTING REPORT
AND RECOMMENDATION AND
DENYING PETITION**

The Magistrate Judge recommends that this habeas petition be dismissed as untimely. Petitioner filed an untimely petition in State Court, which he appealed to all levels, finally being denied discretionary review by the Washington Supreme Court on statute of limitations grounds. As detailed by the Magistrate Judge, the one-year statute of limitations began to run on August 30, 2003 and expired August 30, 2004. Petitioner did not file his habeas corpus petition with this Court until October 17, 2005. Moreover, the untimely state court petition for post-sentence relief did not toll the federal statute of limitations because the petition did not constitute a “properly filed” petition.” *See Pace v. DiGuglielmo*, ____ U.S. ____ (2005).

Petitioner has filed objections asserting that he did file his federal petition timely but that it was lost in the mail. He states that he then refiled, but when he called to find the status of his case, he was told there was no case on record. He asserts malfunction of the computer at Stafford Creek, and argues that pursuit of the state remedies should not count against him. He asserts new evidence coming in the form of a witness affidavit stating that the alleged victim lied and that the crime did not happen. There is no

1 evidence to verify Petitioner's assertions, and they are insufficient to convince this court that his untimely
2 petition should be considered.

3 The Court, having reviewed the petition, the Report and Recommendation of the Hon. J. Kelley
4 Arnold, United States Magistrate Judge, objections to the Report and Recommendation, and the remaining
5 record, does hereby find and Order:

- 6 (1) The Court adopts the Report and Recommendation;
- 7 (2) The petition for writ of habeas corpus is DENIED;
- 8 (3) Petitioner's pending motions are moot and/or inappropriate and therefore DENIED; and
- 9 (4) The Clerk is directed to send copies of this Order to petitioner, to counsel for respondent,
10 and to the Hon. J. Kelley Arnold.

11
12 DATED this 26th day of May 2006.

13
14 
15 FRANKLIN D. BURGESS
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28